

## REMARKS

Prior to entry of this amendment, claims 1-33 and 36-44 were pending in this application before claims were withdrawn under a restriction requirement.

In response to the restriction, Applicants elected claims 1-16, 27-30, 36 and 38-43. (See paragraph 1 on page 2 of the Office Action<sup>1</sup>; see Page 15 of the RESPONSE TO ELECTION REQUIREMENT AND AMENDMENT dated August 9, 2002 referred to hereinafter as the ELECTION RESPONSE). On page 1 of the Office Action, it is stated that claims "17-26, 28, 29, 31-33, 37 and 44 are withdrawn" (Emphasis added). Because the ELECTION RESPONSE shows claims 28 and 29 being elected and not withdrawn, Applicants will proceed as if claims 28 and 29 are still in the case and not withdrawn.

Upon entry of this amendment and in view of the withdrawal of certain claims, the claims now available for examination are Claims 1-16, 27-30, 39-43 and 45. Claims 17-26, 31-33, 37 and 44 are withdrawn and claims 34-36 and 38 are canceled.

## IN THE CLAIMS

The claims stand rejected under 35 USC § 112 and under 35 USC § 102 and 103. Amendments and arguments are submitted to avoid the rejections as detailed hereinafter.

### Claim 1

Claim 1 stands rejected under 35 U.S.C. §102 in view of Winchell, Larkin '267 (hereinafter "Larkin"), Sullivan and Sperko, et al, (hereinafter Sperko). Applicants have here amended claim1 to now define a structure in which the base of the spout has two spaced apart outer surfaces which meet at opposite ends or points and in turn is in effect somewhat boat-shaped. None of Winchell, Larkin, Sullivan or Sperko show a spout with a base shaped as defined in claim 1 as now amended. In turn the rejection under § 102 is avoided.

A rejection under 35 U.S.C. § 103 is also not applicable. The art cited and applied show varieties of containers that have two spouts. However, none of the art shows a structure in

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<sup>1</sup> "Office Action" refers to the Office Action Summary and Detailed Action mailed March 17, 2003

which there is a spout connected to a boat shaped base and a second spout in the perimeter or in the side panel.

Indeed, the TFO PRODUCT SHEET and at least Cattach show products having a spout with a boat shaped base; but the TFO PRODUCT SHEET and Cattach do not show structures having two spouts in the perimeter at least one of which has a boat shaped base as required by Claim 1 as now amended. Given the absence of teachings and any recognition of the advantages of the arrangement as claimed, and given the absence of a suggestion to modify and provide such a configuration, claim 1 as amended should be allowable.

#### Claims 2

Claim 2 depended from claim 42 before being amended at this time to again depend from claim 1.

Claim 2 defines a device with the spouts of claim 1 which is believed to be allowable. In turn, claim 2 should be allowable for the same reasons stated with respect to claim 1. In addition, Claim 2 defines structure in which one spout is near the bottom and one near the top. While the art shows some multi-spout devices, the art does not show products with a first spout as claimed and a second spout as claimed.

#### Claims 3, 4 and 5

Claims 3-5 depend from claim 2 and in turn are allowable for the same reasons stated with respect to claims 1 and 2. In addition, the art does not show a structure with the left section and right section as defined by claim 2. Further, the spouts are not located as defined by claims 4 and 5.

Claims 3, 4 and 5 are therefor believed to be allowable.

#### Claim 6

Claims 6 has been declared allowable if rewritten to overcome rejections under 35 USC § 112 and if rewritten to include the limitations of the intervening claims. See Paragraph 13 of the Office Action.

Claim 6 and the intervening dependent claims 2, 3, 4, and 5 have all been incorporated into newly amended claim 39 which should be allowable as hereinafter stated.

In view of the fact that claim 2 now depends from claim 1 rather than claim 42, claim 6 depends from claims 1-5.

Claim 6 now defines structure not seen or taught by the art. That is, no reference suggests location of the spouts with a middle section and legs as defined by claim 6. In turn, claim 6 is believed to be fully allowable

#### Claim 7

Claim 7 was deemed to be fully allowable if rewritten to incorporate the limitations of its base claim (39) and the intervening dependent claims 42 and 2-6. The limitations of claim 7 have been rewritten into claim 8 which now is amended to depend from amended claim 39 which now includes the limitations of dependent claims 42 and 2-6.

Claim 7 remains in the case with a different dependency. That is, it now depends from claim 1 through intervening dependent claims 2-6.

Claim 7 defines structure not seen or suggested in the art and is in turn deemed to be fully allowable.

#### Claims 8

Claim 8 stands rejected under 35 U.S.C. § 102 over Winchell, Larkin, Sullivan and Sperko.

Claim 8 as examined depended from claim 39 through claim 42. Claim 8 has been amended to depend from claim 39 and to include limitations found in claim 7. Claim 39 is allowable. In turn, Claim 8 as now amended is believed to be fully allowable.

#### Claim 9

Claim 9 stands rejected under 35 U.S.C. § 103 based on Winchell, Larkin or Sperko. Claim 9 now depends from allowable claim 8 and allowable claim 39 so that it is likewise allowable.

#### Claims 10

Claim 10 stands rejected under 35 U.S.C. § 112 ostensibly because it depends from claims 4 and 5 having language found to be objectionable. Applicant has incorporated the limitations of claims 2-6 and claim 42 into claim 39 which should be allowable as stated in paragraph 13 of the Office Action. The limitations of claim 10 can also be found at least in part in claim 39. In turn, claim 10 remains in the case but dependent from claim 6 and in turn from claim 1.

It is allowable for all the reasons stated with respect to claims 1-6.

#### Claims 11, 12 and 13

Claims 11, 12 and 13 are all stated to be allowable in paragraph 13 of the Office Action with correction of objections to prior claims under 35 U.S.C. § 112. Applicants have amended claim 11 to depend from claim 39 which is allowable. In turn, claim 11 is allowable.

Claims 12 and 13 depend from allowable claim 11 and allowable claim 39 so they too are fully allowable.

#### Claims 14 and 15

Claims 14 and 15 stand rejected under 35 U.S.C. § 102 in view of Sperko. Claim 14 has been amended to depend from claim 39 and in turn is fully allowable for the reasons stated in paragraph 13 of the Office Action. Claim 15 depends from allowable claim 14. In turn, claims 14 and 15 are all fully allowable.

#### Claim 16

Claim 16 stands rejected under 35 U.S.C. § 103 in view of Cattach. Claim 16 has been amended to depend from claim 39 which is fully allowable. In turn, claim 16 is fully allowable.

#### Claims 17-26

These claims have been withdrawn.

#### Claim 27

Claim 27 stands rejected under 35 U.S.C. § 103 based on Motsenbocker in view of TFO Product Sheet.

Motsenbocker shows or teaches construction of a portable liquid dispenser 10 having a container 14 in or with a carrying case 12. Liquid is dispensed from the container 14 by a tube 16. FIG. 3 is a sectional view of the container at section lines 3-3 seen in FIG. 2.

From FIG. 3, the joint 31 (Col. 3, line 6) is shown effecting a connection between sides of the container. FIG. 4 purports to show a sectional view stated to be along or from lines 4-4 of FIG. 3 (see Col. 2, lines 55-56). However, if FIG. 4 were a sectional view of a sectional view, it would show only half of the container 14 and case 12. Since the sectional view of FIG. 4 shows the entire device, the sectional view of FIG. 4 must be a sectional rendition of the dispenser 10 of FIG. 3 taken generally normal to the section lines 3-3 or along a section line running roughly from the vicinity of the numeral 10 and the numeral 14 in FIG. 2. With that understanding, another joint 33 is shown with an unnumbered but identical joint on the side opposite joint 33.

The joints 31 and 33 are presented showing that the container 14 has bonding joints 31 and 33 along 3 sides of the container 14. No joint is shown along the side of the container where the numeral 15 and its tag line appear in FIG. 3. The tube 16 extends out of or away from the container 14 from that side of the container 12 without a joint 31, 33. That is, the tube 16 and its un-numbered connector are fastened to the container along the only edge where there is NO BONDING JOINT. Thus, one skilled in the art would understand Motsenbacker to be teaching a construction in which a tube connection is made or a spout is attached at a side which does NOT have a bonding joint. No other reasonable inference can be drawn from Motsenbacker's drawings and terse description.

The TFO PRODUCT SHEET as well as Cattach and Lerner show structures with one spout mounted in the perimeter at the top of the container. Shimko shows a spout at the other end. That is, all show containers with some form of perimeter seal and with a spout having only one pointed structure in that perimeter seal.

It thus becomes apparent that Cattach, Lerner and the TFO PRODUCT SHEET all appear to show or teach a device with but one spout in a perimeter seal. The cited and applied Motsenbocker shows one outlet NOT in the perimeter or joint and another recessed pop-up or retractable filler neck 21 located in the side and NOT in the joint. Combining any one of TFO PRODUCT SHEET, Lerner, Cattache or Shimko with Motsenbocker thus seems unlikely and in fact not logical to one skilled in the art.

The references teach away from each other. Motsenbocker teaches one to put inlet/outlet structures in the side of the container while TFO PRODUCT SHEET, Lerner, Massioui, Cattach and Shimko each teach putting only ONE inlet/outlet device in the perimeter. That is, the teachings of the applied references are inconsistent and indeed incompatible. The joints 31 and 33 of Motsenbocker as illustrated do not appear to be of the type in which one could incorporate a fill/spout device like those seen or used in the TFO PRODUCT SHEET or in Lerner, Cattach, Massioui or Shimko. Thus, it is fair to conclude that the suggested combination of Motsenbocker and the TFO PRODUCT SHEET cannot be effected without some teaching in either of those references or another reference to combine the two ideas.

Aguettant shows two inlet/out devices 16 and 18 along the top of the container which are positioned to extend through a pocket 2 or pouches 3 and 3a. Each have a bayonet type plunger

17 that pierces a sealing ridge 6. Thus, Aguettant is quite different showing a device along the perimeter that is used to pierce a perimeter seal rather than a device in a perimeter seal.

Katzman, et al shows an ostomy container with ports on opposite ends. An ostomy bag is for use by persons who have had some type of malady that precludes or limits normal use of kidney and/or colon. That is, a device is shown which is intended to receive liquids and materials, not dispense liquids. Thus, it is not teaching means for dispensing. Beyond that, there are some kind of inlet/outlet devices shown that appear to be in the perimeter. Given the absence of written description, one can only fairly surmise that the an elongated inlet/outlet device for connection to tubes is positioned frictionally in some kind of bushing or mounting ring seen as rectangles on either side of the elongated inlet/outlet tube. That is, the devices shown appear to be structurally quite distinct from the spout as defined in the claims of the present application.

Thus, a teaching to combine the spout of TFO PRODUCT SHEET or other references showing perimeter mounted inlet/outlet structures with Motsenbocker cannot be found in the cited or applied art.

That is, the structure as defined by claim 27 is not in the art and cannot be found by assembling from different references based on teachings from the art . It is only with the teachings of applicant that one looks at the art and attempts to show that it is suggested or obvious in view of the art. However, the teachings of the Applicants are all that can be found to suggest construction of the device as claimed. Thus, the rejection is traversed and should be withdrawn.

#### Claims 28 and 29

Claims 28 and 29 were stated by the applicant to be elected. This has been duly noted in paragraph 1 on page 2 of the Office Action. However, the summary set out in paragraph 4a of the first page of the Office Action states that claims 28 and 29 are withdrawn. That statement is in error. Claims 28 and 29 were never withdrawn and do not need to be withdrawn. Indeed, they now depend from allowable claim 27 and in turn are allowable.

To the extent they were erroneously stated to be withdrawn, it is requested that the record be corrected to reflect their status and that the claims be allowed.

#### Claim 30

Claim 30 stands rejected over 35 USC § 112 because it uses the expression "third base" in connection with the "third spout." It has been held to be allowable if rewritten to incorporate the limitations of the parent or base claim and upon correction to avoid the rejection.

Claim 30 has been amended to incorporate ALL the limitations of claim 27 from which it depended so that it is now independent and fully allowable.

The language "third base" has been amended to avoid the rejection. However, for the record, it is Applicants position that use of the term "third base" in connection with the "third spout" is fully consistent with the practice of using similar terms in similar claims. That is, there is a second base defined in connection with the second spout. See Claim 39. Thus, it would be inconsistent with good claim drafting practice to have a second base in claim 30 different structurally from the second base found in claim 39. The amendment here being made is not intended to nor does it change the scope of the claim 30. Rather it is made simply to advance this case to allowance.

#### Claims 31-33

These claims have been withdrawn as set out in paragraph 1 of the Office Action.

#### Claims 34 and 35

These claims were canceled in prior amendments.

#### Claim 36

Canceled.

#### Claim 37

Withdrawn.

#### Claim 38

Canceled.

#### Claim 39

Claim 39 has been substantially amended to include the limitations of claims 2, 3, 4, 5, 6 and 42 and to avoid the rejection of claims 4, 5 and 6 under 35 U.S.C. § 112. Inasmuch as claim 6 was said to be allowable with all the limitations of the intervening dependent claims incorporated.

Claim 39 is therefore fully allowable as all rejections of record have been avoided.

Claims 7, 10, 11, 12 and 13 are allowable... depend from claim 6 - changed dependency of claim 7 to 39.

Claims 40, 41 and 43

Claims 40, 41 and 43 all depend from claim 39 which is allowable. In turn, claims 40, 41 and 43 are allowable.

Claim 44

Withdrawn.

Claim 45

Claim 45 has been added and depends from claim 1. It is allowable for all the reasons stated in connection with claim 1 as now amended.



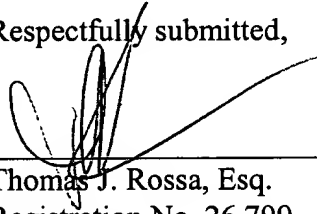
## CONCLUSION

Applicant asserts that all pending claims are in condition for allowance. Early action and allowance is respectfully requested.

Please charge any fees not accompanying this communication that may be required to deposit account 08-2665.

If there are questions, the Examiner can reach Applicants' counsel at (801) 521-5800 or by e-mail at [rossat@HRO.com](mailto:rossat@HRO.com).

Respectfully submitted,



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